

**CORRESPONDENCE
FILE**

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**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

_____)	
In the Matter of)	
)	
C.F. Communications Corp., et al.)	EB Docket No. 01-99
)	
Complainants,)	
)	File No. E-93-73
v.)	
)	
Century Telephone of Wisconsin, Inc.,)	
et al.)	
Defendants.)	
_____)	

**To: Arthur I. Steinberg
Administrative Law Judge**

**ANSWERS AND OBJECTIONS OF
BEST PAYPHONES INC. TO DEFENDANT'S FIRST SET OF
INTERROGATORIES TO COMPLAINANT**

Best Payphones, Inc. ("Best"), complainant in File No. E-93-73, hereby responds to Defendant's First Set of Interrogatories to Complainant.

GENERAL RESPONSES/OBJECTIONS

For the purposes of these responses and objections, the term "defendant" is used to refer to Verizon-New York, Inc., and all of its corporate predecessors and successors, including, but not limited to, New York Telephone Company.

Best objects to defendant's interrogatories to the extent that they may encompass matters that are subject to the attorney-client privilege and/or the attorney work product or other immunities from discovery. Best states, however, that it presently knows of no

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responsive information or materials in its possession, custody or control that are within the scope of this objection.

Best's responses state that it will make certain types of documents available for inspection and copying by defendant. The availability of such documents is subject to defendant's agreement to a reasonable confidentiality agreement.

RESPONSES AND OBJECTIONS

1. Please state your full name, your place and date of incorporation, your principal place of business, your current address and telephone number, and all names under which you do or have done business.

Response: Best Payphones, Inc., a New York corporation created in June 1987. Best's current address and telephone number are:

P.O. Box 160
Roslyn Heights, NY 11577
516-680-1336

Best neither uses, nor has used, any other business name.

2. To the extent that the business or legal entity that filed the Complainant no longer exists, please identify each person or entity that claims a legal right to receive any monetary settlement that might be given or any damages that might be awarded as a result of your Complaint, including, but not limited to, the name, address, and telephone number of any debtor in possession or bankruptcy trustee or estate.

Response: Not applicable.

3. If the business or legal entity that filed the Complaint sold or otherwise transferred its business or any payphones identified in response to Interrogatory Number 4 to another entity, please identify that entity, the business or payphones involved, and any documents that describe that transaction.

Response: Not applicable.

4. Please state:

- (i) the telephone number of the lines you used to provide public payphone service for which you claim you were wrongfully assessed an EUCL charge during the relevant time period;
- (ii) the date on which each such telephone line was installed and the date each such telephone line was suspended or disconnected; and
- (iii) the location of each public payphone for which you claim you were wrongfully assessed an EUCL charge during the relevant time period; and
- (iv) for each such payphone, state the basis for your contention that there was not "a combination of general public and specific customer need" for the phone service at that location.

For each person identified as having personal knowledge of this information, state the substance of their knowledge and identify any documents, data compilations, or tangible things in their possession, custody, or control that are relevant to the facts alleged in the Complaint or that support your claim for damages in this proceeding.

Response: (i) Concurrently with service of these responses, Best is producing for defendant copies of documents that provide, among other information, the telephone numbers, locations and dates of installation of Best's payphones. Some or all of the same information, and/or other information that may be responsive to this interrogatory may be derived or obtained from Defendant's bills to Best for the relevant time period. Best objects to producing copies of those bills that it has retained as unduly burdensome because they are already in defendant's possession and control and defendant can derive the telephone numbers of Best's phones from those bills as easily as complainant. Subject to and without waiving this specific objection, Best will make those documents available to defendant for inspection and copying at a mutually agreeable time at Best's place of business.

(ii) Best incorporates and repeats its response to Interrogatory 4(i). In addition, Best states that it does not have information specifically on the date of

disconnection of any of its phones for the relevant time period, except to the extent that such information can be derived from defendant's bills to Best. Best objects to producing copies of those bills that it has retained as unduly burdensome because they are already in defendant's possession and control and defendant can derive the telephone numbers of Best's phones from those bills as easily as complainant. Subject to and without waiving this specific objection, Best will make those documents available to defendant for inspection and copying at a mutually agreeable time at Best's place of business.

(iii) Best incorporates and repeats its response to Interrogatory 4(i).

(iv) Since its inception, nearly all of Best's hundreds of payphones have been (and are) installed on public sidewalks and thus are accessible to the general public and are not available for use by any specific customer to meet its needs. A very small number (approximately 15) of Best's payphones during the relevant time period were installed on private property. Those phones were installed in outdoor locations such as parking lots where the phones were readily accessible to the general public. It has always been Best's business practice to place its payphones in such outdoor locations (whether on public or private property) with the objective that each phone will generate the maximum achievable coin call and other usage-related revenue. That requires placing the phones in locations accessible to the maximum potential number of users, i.e., in public places.

To the best of its knowledge and belief, during the relevant time period, in approximately five instances, Best permitted owners of private business premises where Best had installed a payphone to have an extension phone attached to the payphone line for the private use of the owner of the premises. In each such case,

Best required the premises owner to remove its extension attached to the payphone line within a matter of months. As of the date of this response, Best has been unable to locate any records identifying these particular payphones' locations or the dates when the premises owner's extension phone was attached to the payphone line.

The information provided in response to Interrogatory 4 is based on the personal knowledge of Mr. Michael Chaite and on Best's business records. The documents, etc., that are relevant to this matter include those described in the response to this Interrogatory 4, as well as defendant's records regarding the telephone lines it provided to Best, its bills to Best and its records regarding Best's payments to defendant for services provided by defendant during the relevant time period.

5. For each telephone number identified in response to Interrogatory Number 4, please state the amount of the EUCL charge you claim you paid each month during the relevant time period, provide proof of your payment of the charge, and identify any documents you contend constitute evidence of payment.

Response: Best objects to this interrogatory as unduly burdensome. Defendant provided the telephone lines to which Best's payphones were connected and, therefore, already has, or should have, in its possession, custody and control the information sought by this interrogatory.

Subject to and without waiving the foregoing objection, the amounts that Best claims as damages can be obtained or derived from defendant's bills to Best during the relevant time period, from defendant's records of payments by Best to defendant for EUCL charges incurred for service during the relevant time period and, potentially, from

other documents described in Best's answer to Interrogatory 4. Complainant has no computation of such amounts. To the best of its knowledge and belief, Best paid defendant's EUCL charges prior to September 1991. Best refused to pay defendant's EUCL charges from September 28, 1991, until after the FCC's 1995 ruling that LECs were authorized to collect EUCL charges for lines provided to independent payphone service providers. In approximately mid-1996, Best began paying defendant's monthly EUCL charges in the ordinary course of business and made two or more payments to defendant of approximately \$9000 each to begin making up past, unpaid EUCL charges.

6. Please provide a computation of each and every category of damages for which recovery is sought, including the source and method of computation, and identify all relevant documents and materials or such other evidence to be used by the Complainant to determine the amount of damages sought as set forth in section 1.722 of the Commission's rules.

Response: See Best's response to Interrogatory 5. Best seeks to recover EUCL charges applicable to the relevant time period that Best paid for telephone lines provided to it by defendant to which Best connected its public payphones, plus interest from the date of each payment of such charges to the date of defendant's repayment of them to Best. Best expects to use records to be obtained from defendant, such as defendant's bills to Best for service during the relevant period that included EUCL charges, defendant's records of the phone numbers, installation and disconnection dates of Best's payphones, as well as defendant's and Best's records of Best's payments to defendant, to calculate the damages to which Best is entitled.

7. If you cannot provide the information requested in Interrogatory Number 6, then please provide an explanation of:

- (i) The information not in the possession of the Complainant that is necessary to develop a detailed computation of damages;
- (ii) Why such information is unavailable to the Complainant;
- (iii) The factual basis Complainant has for believing that such evidence of damages exists; and
- (iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence, as set forth in Section 1.722 of the Commission's rules.


Response: The records of defendant that Best described in its response to Interrogatory 6 are not available to Best or, if they are included in the documents delivered by defendant to Best's counsel on June 13, 2001, Best and its counsel have not yet had a reasonable opportunity to make use of them in this regard. When appropriate records of defendant are available, Best expects to be able to determine the amount of EUCL charges that defendant billed to Best, the amounts of such charges that Best paid and when Best made such payments. Best has been unable to date to locate documentation in its own records of the amounts of EUCL charges it paid to defendant for service during the relevant time period.

9. Please state the full name, address, title and position of each person you plan to call as a witness at the hearing in this matter and identify the subject matter on which they are expected to testify. For any person you plan to call as an expert witness, also include the professional qualifications, the facts and opinions to which they are expected to testify, the grounds of each opinion, and any documents used to formulate or support their opinion.

Response: Best has not yet determined whom it will call as witnesses at the hearing in this matter. Best will provide the requested information in a supplemental response when it has made that determination.

AS TO OBJECTIONS:

WRIGHT & TALISMAN, P.C.

By 
Michael J. Thompson

1200 G Street, N.W., Suite 600
Washington, D.C. 20005
202-393-1200

June 15, 2001

DECLARATION:

I, Michael Chaite, hereby declare that I have read the foregoing "Answers of Best Payphones, Inc. to Defendant's First Set of Interrogatories to Complainant" and I hereby certify on this 15 day of June, 2001, that the responses to those interrogatories are true and correct to the best of my knowledge, information and belief.



Michael Chaite

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2001, copies of the foregoing “Answers and Objections of Best Payphones Inc. to Defendant’s First Set of Interrogatories to Complainant” was served by hand-delivery on the following parties:

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Federal Communications Commission
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Magalie Roman Salas, Secretary
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And by U.S. Mail on the following parties:

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